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L E T T E R

T O T H E

Right Honourable the Earls of  
*H Wyndham*  
EGREMONT and HALIFAX,

His Majesty's Principal Secretaries of State,

O N T H E

S E I Z U R E

O F

P A P E R S.

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LETTER

TO THE

Right Honourable the Earl of

FORBES and HALIFAX

His Majesty's Principal Secretary of State

ON THE

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SECRET

OF

PAPER



1763

THE GILBERT

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A  
L E T T E R  
O N T H E

SEIZURE of PAPERS.

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MAY 19, 1763.

MY LORDS,

**A**MONGST the variety of polemical writings produced by a late affair, the SEIZURE OF PAPERS has not, so far as I have observed, been taken into consideration by any of the correspondents of the public. Not one however of the points which have been agitated, is of greater



greater importance, or more general concern, as a QUESTION OF LIBERTY, interesting in the highest degree to EVERY SUBJECT in the kingdom. Many other letters have submitted to the publick very important reflections on the *privilege of parliament* and *commitments*. I shall now take the liberty of offering my thoughts upon that great article of SEIZING PAPERS, which, I own, strikes me in a very strong light.

Bail will deliver every man from imprisonment before conviction, for any offence, not capital. An illegal commitment may be corrected by the summary interposition of the king's courts; and even personal restraint, at the worst, can only to any great degree affect the single person who suffers it. I have not yet heard of a *Habeas Corpus* to redeem papers from captivity. Commissions of gaol delivery do not extend to them, nor can they petition for trial, in order to force their liberty. It is not *He only* whose



whose papers are seized who is distressed by it, but every person in the least connected with him, may by the most accidental circumstances imaginable be involved in the consequences. These go to the friend and the friend's friend, and, in short, it is impossible to say what may be the extent of their influence.

I DOUBT not but there is some legal method of recovering papers, as well as any other goods, which are unlawfully detained from the right owner; but I am sure the remedy must, from the nature of the thing, be very ineffectual, if it was less tedious and troublesome, than I dare say it is, as well as all other proceedings at law. The mischief and damages occasioned by the seizure of papers must in every case be very great, in many infinite, and irreparable; such as no consideration, no restitution can compensate, no satisfaction indemnify.

PAPERS relate to the affairs of business and property; the advantages, title, and security

curity of which depend upon them; but that is not all. Every man, who has papers, has his secret and confidential correspondences; his private studies, researches, and pursuits, whether of profit, entertainment, or improvement. His *papers* contain all these. The merchant has his secrets of trade; the philosopher his discoveries in science. Every accurate man has the impenetrable secret of his circumstances; the state of his affairs. Many have their *WILLS, settlements*, and dispositions of their estates, sealed up in silence, not to be broke, but with their own heart-strings. These are to be found among their *papers*. A man's riches may be there in things known to none but himself; and his poverty may from thence *only* appear, the unseasonable discovery of which may involve him in irreparable ruin. *Papers* are the depositories of our fortune; the trustees of our credit, character, and reputation; the secretaries of our pleasures. They are our closest confidants; the most intimate companions of our bosom; and, next to the  
recesses

recesses of our own breasts, they are the most hidden repository we can have. Our honour and fame, our estates, our amusements, our enjoyments, our friendships, *are*, and even our vices *may be*, there: things that men trust none with, but themselves; things upon which the peace and quiet of families, the love and union of relations, the preservation and value of friends, depend. Secrets that may cost a man his life; secrets (of which there are many) that tho' they can neither affect life nor liberty, yet some men would rather die than have discovered; the revealing of which may render life insupportable, may dissolve every tie of nature, loosen every bond of society, and put an utter end to the comfort of existence.

It is for these reasons, that wise men not only keep their papers with the greatest care, but at convenient seasons purge their repositories, and destroy those that ought not to be preserved, after the immediate purposes of them are answered. They have above all, a special care into whose hands their



secret papers shall come, after they are dead : a precaution that every man owes not only to himself, but to his family and friends, perhaps to his country.

BUT what need is there to enlarge upon such a topick? Every man's own mind will represent the thing to him in a stronger light, than any language can convey. Let any person, the most private and the least employed, or concerned, in business, study, or correspondence, pause only a moment, and consider if he would choose to have his closet ransacked, his most private repositories rifled, his papers carried he knows not where, and exposed to he knows not whom. Let him likewise reflect, that in this matter every man is dependent upon another, in a singular, but unavoidable manner, to an unspeakable, but inextricable degree; and that every person may in a great measure, or to an equal effect, suffer the same inconveniencies from the misfortunes happening to his friend, as if it had befallen himself:

so that in proportion to the extent of a man's connections, and correspondence, is he exposed to this hardship, and to all the mischievous consequences of it.

THE most superficial thought upon these things will supersede the use of any argument to convince mankind of the important mischiefs attendant on a SEIZURE OF PAPERS, or to satisfy them, that personal liberty itself is not an object of greater concern than the security of repositories is to most men.

Is it not then abundantly provided for? It is to be hoped, that it is by the law of the land; but it would seem the present practice of the secretaries of state's office pays no regard at all to it; if what has been published to all the world be true. It has not been contradicted; on the contrary, it is acknowledged.

The parliament, to make private correspondence sacred, has enacted that a single letter shall not under the highest penalties be opened at the Post-office, with-

out an exprefs warrant in writing from a fe-  
cretary of state, in whom that particular  
power is lodged, as one of the first minifters  
of government. What fhall we fay then,  
when we hear that a perfon (it is of very  
little confequence who, but it does not lef-  
fen the importance of the confideration, that  
he is a MEMBER OF PARLIAMENT) has  
had ALL HIS PAPERS SEIZED, without in-  
formation upon OATH, by virtue of a VER-  
BAL ORDER of a fecretary of state, whose  
powers as a magiftrate (in which character  
only he acts in this instance) are no higher,  
it feems, than thofe of a juftice of peace ;  
an ORDER which the fecretary of state com-  
manded to be carried into execution at  
MIDNIGHT, though the melfenger had  
either too much humanity or too little con-  
fidence in his authority, to obey that part  
of the order ; or perhaps had a greater value  
for his life, than to expofe it in fo mad an  
exploit, as a midnight entry into a man's  
house without fo much as the pretence of a  
warrant naming the owner.

THE



THE PAPERS have been carried to the secretary of state's office; and there (as your own letters intimate) they have been thoroughly examined. The news papers have already published some of the privacies contained in them. Is this LAW? Is it LIBERTY? Is it GOVERNMENT? Or is it TYRANNY and OPPRESSION? If it is LAW, where is LIBERTY? If it is NOT LAW, where is the VOICE of LIBERTY?

BUT can there be SUCH LAW, in this FREE COUNTRY? One cannot surely read it in the CONSTITUTION; and if it is in the statute book, or in the record of any court in the kingdom, it ought not to remain a moment longer capable of being quoted to disgrace the BEST form of GOVERNMENT, and disquiet the FREEST PEOPLE. No Englishman till he sees it read or is informed of it, can believe that there is such a law in this LAND OF LIBERTY. SLAVERY itself could hardly endure it. It must be the HEAVI-  
EST

EST BONDAGE, even where there is NO FREEDOM.

To explain the mischievous nature and oppressive tendency of such a law, if there were any such, is past the power of words. To exaggerate the enormity of such proceedings, would be to insult the lowest understanding in this country, where the GENIUS OF LIBERTY reigns. Such acts are little short of SACRILEGE.

WE are however told by one Person in your office that every step was taken by the *attorney and solicitor general's* advice. THAT cannot be ; for the most ignorant constable in Westminster could have instructed your lordships that a VERBAL ORDER was a warrant for NOTHING ; and it is inconceivable how you yourselves could have thought otherwise. Another champion of power, who calls himself a *moderate whig*, vindicates the whole proceeding by saying with a perspicuity peculiar to his own stile, "The length  
of

“ of time and several precedents *may not*  
 “ constitute an act strictly legal, which *may*  
 “ not be literally so (*these are his own*  
 “ *unintelligible words*) yet it will acquit  
 “ those who act conformable to precedents  
 “ before uncontroverted, and believed  
 “ to be legal, from any design of acting  
 “ illegally, in the opinion of every honest  
 “ man.”

How there can be a precedent, unless  
 in unauthentick memory, for a *verbal or-*  
*der*, is not so easy to be understood. This  
 instance will make none; for no body  
 doubts of the illegality of it. The prece-  
 dents of the secretary of state's office how-  
 ever, if there was a cart load of them, are  
 of no authority. If they have never been  
 controverted, then it only appears that they  
 have not *yet* been judicially disputed. Hi-  
 therto, it is to be feared, it has been too  
 much *fragili quærens illidere dentem*, now it  
 may be found to be *offendet solido*. The register  
 of Sir John Fielding's warrants deserves to  
 carry more weight with it than the book of  
 the



the secretary of state's office. If *that* was sent to your office for a copy book, your lordships, or at least your successors, would not hereafter cause any person to be apprehended by a WARRANT that NAMES NO BODY; which of itself is an offence for which a chief justice in a former reign has been impeached.

THIS ridiculous talk of precedents is shocking to the first idea of a FREE GOVERNMENT. They ought not to be once mentioned. They must at the name of LIBERTY shrink back into the gloomy caverns of tyranny, where such vulcanian thunder bolts only could be forged; as spectres retreat to their dismal shades at the words of a true exorcism.

THERE is indeed hardly any thing so wicked, or unconstitutional, but a precedent may be found for it, if the records of the star chamber, or the memorials of tyranny, are resorted to as authorities. The great ALGERNON SYDNEY, whose valuable blood prepared the soil for receiving the

the seeds of the GLORIOUS REVOLUTION, was executed for high treason ; and the overt act for which he died on a profane scaffold, was that precious MANUSCRIPT found in his closet, which never had been published, and was not completed ; the hand-writing of which was not proved, a fiftieth part of it not produced, nor even the tenth part of *that* allowed to be read at the trial.

But *in whose reign* was this cruel tragedy acted? In the BLOODY reign of *a Stuart*, Charles the Second, an unhappy prince, who sacrificed the lives of the very people who called him from exile, to the fury of his despotism, and who sold the honour of his crown for a pension to support his infamous pleasures.—Who condemned the noble MARTYR of liberty? That arch traitor of his country, the most infamous instrument of regal tyranny, and a very butcher of his own species, Lord Chief Justice JEFFRIES of ROTTEN MEMORY.

Look to the reigns of a glorious WIL-  
LIAM, who nobly rescued and happily re-  
stored,

stored, and of the ILLUSTRIOUS GEORGES, who to their immortal honour, have built up, this INVALUABLE CONSTITUTION; PRINCES who have read the value of ENGLISH LIBERTY in the lustre of the crown which IT placed upon their heads; PRINCES who have established the security of the PROTESTANT SUCCESSION in their own august family upon the same basis with the ENVIED FREEDOM of THESE NATIONS; the pillars of which are not to be shaken.

FROM *these reigns* can there be produced a precedent of *legal authority* for *such* a SEIZURE OF PAPERS as has happened lately? Do their days so much as furnish an *allowed* example of the fact to the same extent? It may be doubted if in the very worst of times, when arbitrary principles were rising to the top of the precipice, from which at last tyranny fell head-long with its own weight, such things were *avowedly* practised under the *shew* of authority; whatever *meer power*, or rather *force*, as irregular in its acts, as unconstitutional in its foundation, might perhaps do. BUT



BUT what was the pretence of this late violation of rights so sacred in their nature, this invasion of property, in a critical point, which comprehends every valuable interest a man can have? A person is suspected of being the author of a printed paper, which, in the judgment of the secretaries of state, was a seditious libel, and the proof of the fact is to be sifted out of his *own* papers: for your lordships have said in your letter, which is published, that such of the papers seized, as tend to make out the guilt of the owner are to be kept, and used for that purpose.

THE reason is most inadequate, and must appear so to every man, who is not beat out of his senses by the jargon of lawyers, or confounded in his own ideas with the quibbles of legal nonsense.

IF there is a circumstance that can aggravate the injury, which is in itself too great almost to be conceived, it is this use that is to be made of the papers; and nothing

can so much add to the ALARM which the practice of SEIZING OF PAPERS must give to every man.

WHEN a person is brought upon his trial for any offence, he is not bound, nor will any court suffer him to give evidence against himself; but by this method, if allowed, though a man's tongue is not permitted to bear testimony against him, his thoughts are to rise in judgment, and to be produced as witnesses to prove the charge. A man's WRITINGS lying in his closet, NOT PUBLISHED, are no more than his thoughts, hardly brought forth even in his own account, and, to all the rest of the world, the same as if they yet remained in embryo in his breast. When ALL a man's PAPERS are seized, he is at the mercy of his prosecutors. Some may be used to prove a charge, when others, which are *suppressed*, would clearly exculpate him of guilt. It was thus in the infamous proceedings which robbed that hero of patriotism, the great SYDNEY, of his life. *Scraps of an unfinished manuscript*

*manuscript* were the evidences upon which he was condemned, when the rest of that very writing was not produced.

THE rack itself is hardly a more inhuman mode of accusation, or tyrannical method of proof. Both are equally against the first laws of nature ; and nothing can be more unlike the benign spirit of our happy constitution.

IN cases of treason papers are seized, tho' even *then* it is always done with much circumspection, and under many restrictions as to the use to be made of them ; but *that* proceeds upon a quite different principle, a principle of sense and reason.

TREASON, in the general nature of it, must be the crime of *many*. It implies plots and conspiracies, which are carrying on by correspondence, and are to be discovered by *papers*. The safety of the state, which is superior to every other consideration, makes it necessary, to use all possible means



means to unmask the machinations of *treason*, that the dreadful effects may be prevented. *Papers* therefore may be seized, and letters intercepted, as arms, ammunition, and other warlike stores may be secured, that the sinews of rebellion may be cut. This is the sole reason, and end of seizing *papers*, in a *treasonable* case, although they may afterwards be used as proofs of such *overt acts* of *treason* as they are connected with, or bear relation to, so as to make them be considered as a part of the prosecution of the same *treasonable* purposes; yet surely it cannot be law even in cases of *treason*, nor (we hope) ever was law, with any but such a judge as Lord Chief Justice *Jeffries*, that *papers* found in a man's closet, *not published*, and unconnected with any thing but themselves, can constitute a crime, or be brought as a proof of guilt.

WHAT does however hold in *treason*, will not take place in other cases. There is a certain necessary rigour and severity in the laws of *treason*, which would be cruelty, if extended to other crimes.

Many

Many things are allowed in the case of treason, that, if applied to other matters, would be more mischievous in their consequences than the things they were intended to prevent.

It is *treason* to compass or imagine (as it is called) or, in plain English, to contrive or intend the death of the king, if it can be proved by any overt act; and it could be no more than *treason* actually to put the sovereign to death. It is not however murder, *in foro humano*, to intend, or even to attempt to kill another man. There is therefore no example to be drawn from what *is* or *may be* done in cases of *treason*, to any other case; and none can be more unsimilar to it than that of libels,

PUBLICATION is essential to a libel, and the criminality is intrinsic in itself. The offence, and the effects of it, both stand upon the libel *alone*, unconnected with any other thing whatsoever. There is not therefore the least colour of danger, or necessity, to plead  
for

for breaking through any right, or any privilege of the subject, for the sake of discovery or prevention, in such a case; much less to trample upon those rights that are the most sacred and inviolable, and the consequences of injuring them pernicious beyond expression. The evil is great; the mischief apparent. The utility and good is nothing, or so inconsiderable, as to be no object at all.

To the mercy of *any* government even convicts may have some claim; the benignity of *ours*, guilt itself cannot forfeit. Its suavity, and mildness, in prosecutions and trials, can be denied, or interrupted to none. Suspicion, or accusation, do not annul the rights of innocence; nor rob the subject, either of the protection, or *favour* of the laws. The *lenity* of justice is, in England, its *dignity*. Fair trials, and *gentle* prosecutions, are the peculiar glory of this country; and no man should be deprived of any benefit, or advantage, his own silence, or the secrecy of papers *not published*, can afford to protect him against conviction. As he can  
keep



keep his mouth shut, so his privacies ought to be sacred, and his repositories secure.

BUT if the partitions of a man's closet, (which is but another bosom,) are to be wantonly broke down, on every slight pretence, or trivial occasion, and what lies there locked up in secrecy, things that the world never saw, and no man has a right to look upon, are to be exposed at the humour or malice of every, perhaps trading, justice of peace, (for so far it goes) let the most partial determine what must be the consequences. There is an END OF LIBERTY, an end of confidence amongst mankind. A severe restraint is laid upon friendship and correspondence, and even upon the freedom of thought. In short, a FATAL BLOW is given to the most precious and valuable rights of mankind; to the fairest privileges of society. The thing is big with mischiefs innumerable, and inconceivable; the least of them not to be laid in the balance with all the danger of any *libel* the most seditious that can be published, or with any thing less than *high*

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*treason*

*treason* itself, which does, and justly ought to overcome all rights whatsoever of any individual, be the consequences what they may. If care is taken in that case, that no harm be done which can possibly be avoided, nor any unnecessary hardships inflicted, it is all that can be expected, and as much as ought to be required.

PRECEDENTS of seizing the *papers* of printers, and publishers, are comparatively scarce worthy having any notice taken of them in a just and accurate consideration of this subject. The papers and repositories of every private person stand upon a very different foot<sup>ing</sup>. If amongst *these* any distinction can be made, it is due to the case of MEMBERS OF PARLIAMENT, for the sake of their TRUST, and of the interest their constituents have in their freedom, security, and independency. On these all our valuable rights depend; and they cannot be exposed to a greater or more dangerous INFRINGEMENT than an undue SEIZURE OF PAPERS. It has always, for this reason, been the GREAT OBJECT

OBJECT of the HOUSE OF COMMONS, to protect the Members of Parliament from such illegal invasions.

THE publick may, perhaps, be thought to have some more power over those, who are a sort of servants of the publick than over *private* persons; and professed publishers (in the case of publications) are a sort of publick persons. Their shops and offices, therefore, are in some sense, and to a limited degree, the houses of the publick.

THESE kind of people, however, all the world knows, are soon frightened, and intimidation speedily checks them: Ministers know it; and therefore they use it without scruple, and without mercy, when *they* think fit. How far that is consistent with the LIBERTY OF THE PRESS, or for the advantage of the public, is another question.

THE authority of a secretary of state, even a hint from the office, and much more



apprehensions, examinations, and menaces, will soon conquer these poor men's ideas of liberty, and make them fond to redeem themselves. They are very ready to purchase exemption from a hard, expensive, and dangerous prosecution, directed by power and carried on from the public purse, at the expence of submitting to acts illegal, and oppressive, for which a court of law, and an English jury would give ample redress and satisfaction. No stress whatever can therefore be laid on such instances, if any can be cited; but, at any rate, precedents of *fact* are not at all, or in any case, to be regarded. **LEGAL PRECEDENTS** are those whose authority stands upon trial, and judicial decisions of courts of law, in **TIMES OF LIBERTY, and JUSTICE.**

If there have been any examples of undue *seizure of papers*, so far from being precedents to *justify*, or even to *excuse* the practice, they afford the strongest reason in the world for giving a timely and effectual check to it; that it may no longer  
continue

continue to be the *grief* and *burthen* of the subject.

PRECEDENTS which have the *shew* of authority, from the sanction of courts, though of arbitrary and unjust judges, in times too of tyranny and oppression, can only be mentioned to be scorned, and inveigh'd against, in days of LIBERTY and JUSTICE; or to be set up as beacons to warn against the shipwrecks, which the rocks and quick-sands of arbitrary power have occasioned, in former ages.

BUT in the halcyon days of LIBERTY, when JUSTICE is administred with PURITY, care will be had to avoid precedents of *seeming* authority, to give to proceedings that are *arbitrary*, and oppressive, the appearance of being *legal*. It is the more necessary to do it, because precedents of such times will have weight from the character of the times. Bad and illegal precedents of *fact* cannot be too soon, nor too severely corrected; not only for the  
honour

honour of the government, and the present security of the subject, but that they may not remain to be quoted in succeeding, and in worse times, if such shall ever be the curse of this country, except as authorities *against* any attempt to imitate the practices formerly condemned, and effectually to prevent their being renewed or repeated.

EVERY TRUE FRIEND OF LIBERTY therefore will anxiously desire to see this question have a fair trial, that he may know exactly how the law stands, and be fully apprized of his danger; so that all may provide against it the best they can. If on every pretence or suspicion of a libel, or of what not only a secretary of state, but the lowest magistrate of the peace, may please to deem one, in which POLITICKS, PARTY, PREJUDICE, and RESENTMENT, will always have a great influence, OUR HOUSES, and our FRIENDS HOUSES, are to be OPEN at all hours and under all circumstances to every prowling officer of the crown, actuated by curiosity, interest, design, or revenge,



venge, he will be the wisest man that corresponds the least with others, and the most prudent who writes very little, and keeps as few papers as he can by him. None but a fool in this case will have any secrets at all in his possession.

THAT no such BADGE OF SLAVERY does *yet* exist in this country, is still believed. That it never may exist will naturally be the wish of every ENGLISHMAN. The expectations of LIBERTY are, that if the late most extraordinary, and, as it is thought, unprecedented and illegal *seizure of papers*, produces a legal trial, it will be found to have been manifestly AGAINST LAW; and that all the subjects of this kingdom will have the satisfaction to be assured by a judicial determination, that as their HOUSES are their SANCTUARIES, their CLOSETS are the SANCTUM SANCTORUM of that Sanctuary.

I am,

Your Lordships, &c.